

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1881 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
B A MAKWANA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR BIJU JOSHI for MR SHIRISH JOSHI for Petitioner  
MR VB GHARANIA for Respondent No. 1, 2

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/07/1999

ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioner praying for the direction to the

respondents to grant 2 advance increments as per the Gujarat Civil Services (Revision of Pay) Rules, 1975 to the petitioner from the year 1969. The petitioner is a Tutor (Junior Lecturer) in the B.J. Medical College, Ahmedabad, on which he was appointed on 31-3-67 in Physiology Department (as per his case on transfer).

#. Under the Revised Pay Scale Rules, 1975 it is provided that a Tutor (Junior Lecturer), who is holding Post Graduate degree or diploma is entitled for 2 or 3 advance increments respectively. The petitioner filed successive writ petitions for this claim and the petitions filed earlier have been disposed of. The last of which was decided by this court on 9-5-87 and the directions were given to the petitioner to file representation to the respondent No.1 and the respondent No.1 was directed to decide the same. The respondent No.1 decided the representation of the petitioner but it was not accepted. It is not in dispute that under the Resolution of the Government of Gujarat, Health and Family Welfare Department, Sachivalaya, Gandhinagar No.MCG-1089-1367/91/J dated 23-5-91, the petitioner entitled for 2 advanced increments from 1-1-86. So, the dispute pertains to the period from 1969 to 31-12-85 in this petition.

#. The petitioner possessed Post Graduation Diploma in Paediatric. In the submission of the learned counsel for the petitioner the Rules, 1975 nowhere makes any distinction with respect to the subject in which the teacher has been appointed and the subject in which the concerned teacher has got Post Graduation degree or diploma for the entitlement of the 3 or 2 advance increments as the case may be. The learned counsel for the petitioner submits that though the petitioner possesses Post Graduation Diploma in Paediatric and he has been appointed in subject Physiology still he is entitled to 2 advance increments. It has next been contended that by resolution Rules framed under Article 309 of the Constitution cannot be amended.

#. The learned counsel for the respondents on the other hand contended that the advance increments are being provided for some purpose and object. To provide the subject specialist in the medical hospital to serve the people and to make best medical services available to them this is in fact an intensive to Medical Doctors. It has next been contended that to attract the highly qualified doctors in the government services this scheme was introduced. However, in case, the person has been appointed in a subject other than in which he has Post

Graduation Degree or Diploma then that purpose will not be served and he will not be entitled for this benefit.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. The Rules, 1975 nowhere provide that irrespective of subject in which the doctor has been appointed as a tutor and subject in which he possesses post graduate degree or diploma still he is entitled for the advance increments. It is not correct to contend by the learned counsel for the petitioner that in case a resolution is passed by the Government to restrict this benefit of advance increments only to the doctor, who possesses post graduate degree or diploma in the very subject in which he has been appointed is illegal or unconstitutional. It is not the case of amendment of the Rules. It is the case where some thing is which not clear and specific in the Rules, is made clear and specific by this resolution. It is always open and legally permissible to the Government to fill in gap or supplement the Rules where something is not clear there in by executive fiat. What precisely by this resolution the government has did in the present case and it does not amount to amendment of the statutory rules. It is not contrary to the Rules. So far as the first contention is concerned it is ab initio without any substance. If we go by the scheme of the Rules, 1975, the purpose and object for which same are enacted unless the post graduate degree or diploma is taken in the subject in which the appointment is given to teacher concerned, he cannot be given the benefit of 3 or 2 advance increments. This benefit cannot be given to a tutor, who does not possess the post graduate degree or diploma in a subject other than the subject in which he has been appointed. I do not find any illegality in the approach of the respondents if these benefits are not given to the petitioners. I fail to see how this post graduation degree or diploma of any help to the petitioner. On the basis of qualifications, certainly different pay scale and benefits can be provided. Where the petitioner is possessing post graduation degree or diploma in Physiology how it is of any substance and relevance with the work of the petitioner in other subject. This distinction, which has been made is perfectly legal and justified to which no exception can be made.

In the result, the Special Civil Application fails and the same is dismissed. Rule discharged. No

order as to costs.

(S.K.Keshote, J.)

\*Pvv